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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/276,207	03/25/1999	WILLIAM CARTER CARROLL BULLARD	10360/009001	1809
27820	7590	04/08/2004	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C.			KARMIS, STEFANOS	
P.O. BOX 1287			ART UNIT	
CARY, NC 27512			PAPER NUMBER	

3624

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/276,207

Applicant(s)CARROLL BULLARD, WILLIAM
CARTER**Examiner**

Stefano Karmis

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20, 21 and 23</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on 05 February 2003.

Status of Claims

2. Claim 21 is a newly added claim. Claims 1-21 are under prosecution in this application.

Summary of this Office Action

3. The amendment filed on 05 February 2003 has been fully considered. A new office action has been established. Claims 1-21 are rejected under the prior art cited below and Applicant's request for allowance is respectfully denied.

Response to Amendment

4. The Examiner acknowledges Applicant's remarks regarding the previous rejection, paper number 19, and consequently withdraws the previous rejection from consideration. Any remaining arguments are now considered moot in view of newly established grounds for rejections.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4, 6-9, 11-15, 17-19 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Gallant et al. (hereinafter Gallant) U.S. Patent 5,802,468.

Regarding independent claim 1, Gallant discloses a computer implemented method comprising providing a computer network subscriber with a networking transmission service having a first characteristic, observing at the network that the provided networking transmission service to the computer network subscriber has a second characteristic (column 7, lines 27-30 and column 8, lines 14-31); and billing the computer network subscriber for the networking service having the second characteristic rather than for the service having the first characteristic (column 8, line 32-44).

Art Unit: 3624

Claim 2, determining at the network that resources are not available for providing the first level of networking transmission service; and in response to said determination providing a second level of networking transmission service (column 9, lines 4-25).

Claim 3, the second level of transmission service comprises reassessing and redefining the deployed networking transmission service (column 9, lines 4-26).

Claim 4, determining whether reassessment and redefining of the deployed networking transmission policy was successful (column 9, lines 4-26).

Claim 6, establishing a differentiate service policy that is decomposed into a collection of configurations and deployed in a network (column 4, lines 21-41).

Claim 7, deploying the configurations to a collection of routers or switches that the customer would have access to in the network (column 6, lines 16-35).

Claim 8, observing at the network observes a large number of network flows (column 9, lines 4-25).

Claim 9, using an accounting process that produces information at a granularity level at which the policies are actually deployed (column 4, lines 11-20).

Claim 11, Gallant discloses a computer implemented method comprising providing a computer network subscriber with a networking policy having a first level of service (column 4, lines 21-41 and column 6, lines 7-15); collecting data from the computer network using an accounting process that collects different kinds of metrics from the computer network, correlates the metrics to specified computer network flows, and relates the collected and correlated metrics back to the policy that was defined with the first level of service (column 5, lines 25-54); billing the computer network subscriber for the networking policy having a second level of service rather than for the policy having the first level of service (column 8, lines 32-44).

Claim 12, providing an indication whether or not the policy with the first level of service is being satisfied (column 5, lines 14-24).

Claim 13, determining at the network that resources are not available for providing the first level of networking transmission service; and in response to said determination providing a second level of networking transmission service (column 9, lines 4-25).

Claim 14, the second level of transmission service comprises reassessing and redefining the deployed networking transmission service (column 9, lines 4-26).

Claim 15, determining whether reassessment and redefining of the deployed networking transmission policy was successful (column 9, lines 4-26).

Claim 17, establishing a differentiate service policy that is decomposed into a collection of configurations and deployed in a network (column 4, lines 21-41).

Claim 18, deploying the configurations to a collection of routers or switches that the customer would have access to in the network (column 6, lines 16-35).

Claim 19, using an accounting process that produces information at a granularity level at which the policies are actually deployed (column 4, lines 11-20).

Regarding independent claim 21, Gallant discloses a computer implemented method comprising accepting a contract with the subscriber to provide a networking transmission service having a first characteristic, providing the subscriber with provided networking transmission service (column 4, lines 21-41 and column 6, lines 7-15), observing at the network that the provided networking transmission service to the computer network subscriber has a second characteristic (column 7, lines 27-30 and column 8, lines 14-31); and billing the computer network subscriber for the networking service having the second characteristic rather than for the service having the first characteristic (column 8, line 32-44).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 5, 10, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallant et al. (hereinafter Gallant) U.S. Patent 5,802,468.

Claims 5 and 16, Gallant teaches monitoring pertinent service information for accurate billing and accounting records (column 8, line 32-44). Gallant fails to teach deploying a packet detector monitor in the network to generate network accounting records that be used to determine packet loss. Official Notice is taken, that determining packet loss in a computer networking

Art Unit: 3624

environment is old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Gallant to include for a packet detector to generate accounting records to determine packet loss because it is an efficient manner to determine the performance of the network in regards to service a subscriber is billed for.

Claims 10 and 20, Gallant teaches using an accounting process that produces information at a granularity level at which the policies are actually deployed (column 4, lines 11-20). Gallant fails to specify that the policies are deployed at the source and destination IP address, protocol or destination port level. Official Notice is taken that accounting policies in a computer network are old and well known in the computer and financial arts. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Gallant to include that the policies are deployed at the source and destination IP address, protocol or destination port level because it provides an efficient system to monitor a subscriber's service usage for billing procedures by tracking characteristics related to the subscribers equipment.

Art Unit: 3624

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
02 April 2004



**HANI M. KAZIMI
PRIMARY EXAMINER**